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IN THE
Supreme Court of the United States

OCTOBER TERM, 1995

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE
AND DOUGLAS L. JONES, AS TREASURER,

Petitioners,

v.

FEDERAL ELECTION COMMISSION,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Tenth Circuit

BRIEF AMICUS CURIAE
COMMITTEE FOR PARTY RENEWAL,
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INTERESTS OF AMICUS CURIAE¹

The Committee for Party Renewal is a voluntary, bipartisan association of some 500 political scientists and practitioners committed to strengthening political parties in the United States. Since its inception in 1975, the Committee has worked towards revitalizing and rebuilding political parties. This effort is founded in the belief that political parties are essential to unify and give coherence to the American political system, and to maintain an effective democracy. As part of its goal, the Committee has urged that political parties be able to provide unlimited financial support for their candidates for public office. The Committee is strongly opposed to the notion put forth by the United States Court of Appeals for the Tenth Circuit that party financial support of candidates is, or appears to be, corrupting.²

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¹ Counsel for petitioners and counsel for respondent have consented to the filing of this brief. Written consent is on file with the Clerk.

² See also Appendixes A-C, containing the Committee for Party Renewal's *Declaration of Principles*, *Principles of Strong Party Organization*, and *Statement on Campaign Finance*.

Politics, Rutgers University; Professor A. James Reichley is Visiting Senior Fellow at Georgetown University; Dr. Gary L. Rose is a professor of political science at Sacred Heart University; David K. Ryden, Ph.D., J.D., is an assistant professor of political science at Hope College; Larry Sabato is a professor of government at the University of Virginia; Howard Scarrow is a professor of political science at State University of New York at Stony Brook; John K. White is a professor of political science at the Catholic University of America and co-chairman of the Committee for Party Renewal. These political scientists believe that political parties play an integral role in maintaining a strong, effective democracy in this country.

SUMMARY OF ARGUMENT

The Federal Election Campaign Act ("FECA" or "Act") imposes strict limitations on the ability of political parties to support their candidates financially. The parties' inability to make expenditures on behalf of candidates beyond the Act's monetary limits has the effect of severely curtailing the parties' ability to express support for candidates in any way. Thus, the Act's limitations are an extreme infringement on the parties' freedom of speech and association, and the Act chills the very sort of speech meant to be protected by the First Amendment.

This Court has held that the only compelling interests that can support the Act's infringement on constitutionally protected political speech are actual corruption, or the appearance of corruption. Absent a showing that political parties' financial support of candidates leads to corruption,

or the appearance of corruption, the Act's infringement on parties' freedom of speech cannot be sustained by this Court.

Political parties play a unique and crucial role in our democratic system of government. Parties enable citizens to participate coherently in a system of government allowing for a substantial number of popularly elected offices. They bring fractured and diverse groups together as a unified force, provide a necessary link between the distinct branches and levels of government; and provide continuity that lasts beyond terms of office. Parties also play an important role in encouraging active participation in politics, holding politicians accountable for their actions, and encouraging debate and discussion of important issues.

In upholding the Act's limitations based on the corrupting influence of political parties, the United States Court of Appeals for the Tenth Circuit demonstrates an acute misconception of the role of the political party in the functioning of our democracy. Political parties are not political action committees ("PACs") or special interest groups. To succeed, parties need the support of diverse groups of citizens who represent many views and concerns. Thus, parties must speak to broad, common interests on questions of major concern. They are fundamentally different from groups focused on the special interests of their members.

The Court has upheld limits on contributions against First Amendment challenges because contributions are symbolic in nature; the quantity of communication by a contributor does not increase with the size of the donation. But this rationale does not apply to financial support from political

parties, whether such support is viewed as an in-kind contribution or an expenditure. Financial support by a party on a candidates' behalf is not symbolic. A party's ability to advocate on its candidate's behalf is substantially impaired by the Act's limit on financial support, regardless of how the government chooses to categorize that support.

Simply put, political parties are not corrupting. Moreover, the Act's limitations on parties' ability to spend money on behalf of their candidates *increases* corruption, or at the very least, the appearance of corruption, in the financing of political campaigns. The funding gap created by the limits placed on political party expenditures is filled by PACs committees and special interest groups. The public perceives the increased influence of PACs and special interest groups as corrupting. Thus, the Act erodes, rather than restores, the public's confidence in the purity of the election process.

ARGUMENT

I.

Provisions of the Federal Election Campaign Act limit the freedom of speech and association of political parties as guaranteed by the First Amendment of the United States Constitution

The Federal Election Campaign Act, 2 U.S.C. §§ 431-455 (1994), imposes strict limitations, with civil and criminal sanctions for violations, on the amount of contributions or expenditures by political parties to, or for, their federal candidates. § 441a. These limitations affect political organizations at every level - national, state, county or

precinct. They limit money, goods, and services given by a political party to a candidate. § 431. For example, a state party can contribute no more than \$5,000 per election to a candidate for the United States House of Representatives or Senate. § 441a(d). In 1995, a state party could spend no more than \$30,060 in coordinated expenditures for a party House candidate. *Id.*; 11 C.F.R. § 110.9 (1995). With the increasing costs of campaigns,³ state party committees are being relegated to an ever decreasing role in congressional campaign funding. The Act's limitations restrict one of the traditional and most fundamental activities of political parties: providing financial and material support to candidates. Unfortunately, the restrictions on state parties are mirrored in similar restrictions on national and local party committees. See 2 U.S.C. § 441a(d).

Dollar limitations on party expenditures are in reality a limitation on all party political activity and political speech. Few party political activities can be performed on behalf of a candidate without some expenditure of funds. A party leader can express support for a candidate, but must spend money to ensure this support will be heard by more individuals than those within earshot. As this Court stated in *Buckley v. Valeo*:

A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues

³ See FEC Press Release, *1994 Congressional Fundraising Sets New Record* (Nov. 1995) (noting a seven percent increase in funding in the 1994 congressional elections over the 1992 elections).

discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.

424 U.S. 1, 19 (1976). This Court drew an apt analogy in reference to independent expenditures which applies equally to political party expenditures: "Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline." *Id.* at 19 n.18.

"[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs . . . includ[ing] discussions of candidates" *Id.* at 14 (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). The FECA's limitation on party activity has had a frighteningly chilling impact on parties' exercise of their First Amendment rights. This "chill" affects the daily function of political parties at the local, state, and national levels. Every day the Act limits the discussion of government affairs, including discussion of candidates. For example, every party organization must have each of its publications, such as

letters or newsletters, reviewed to determine whether particular communications might be construed as advocating the election or defeat of a candidate for federal office. If a party organization has already contributed or expended the maximum amount permitted by the Act, this communication would have to be edited to remove any language advocating an individual for federal office. If such publications were not so "sanitized," the costs of production and dissemination would be considered contributions to, or expenditures for, particular candidates; hence, a violation of the law.

The Act puts political parties in the bizarre position of having to refrain from backing the election or reelection of their candidates in general communications for fear of violating the law. The Orwellian exercise of party lawyers determining what statements parties may or may not lawfully make, depending upon the cost of disseminating those statements, is remarkably inhibiting. This is especially so when Federal Election Commission ("Commission") officials may review those determinations and impose civil and criminal sanctions for mistakes.

Local party activity is particularly "chilled" because of FECA limitations and restrictions. The Commission has taken the position that local or county party committees share generally a single contribution limit with a state party, so if a state political party has contributed the "limit" to a candidate, no local or county committee can make *any* contribution to that candidate. 11 C.F.R. § 110.3(b) (1995). Thus, a local party's speech is not merely limited - it is prohibited.

Furthermore, local party organizations often lack the infrastructure to fully understand and comply with the Act. Most local party committees and some state party organizations are staffed substantially by volunteers. Volunteer participation in our political process is paid verbal homage by every politician, but ensuring compliance with the present complex limitations of the Act demands professional staff at every level of political activity down to the grass roots level. It is unreasonable to expect that volunteers will understand the various contribution and coordinate expenditure limits of the present law. Indeed, few lawyers truly understand the regulations and limitations.⁴

II.

The only compelling interests recognized by this Court supporting the Act's limitation on political speech are the risk of actual corruption or the appearance of corruption.

"Reason is the life of the law." Sir Edward Coke, *First Institute* (1928). Is reason alive in this law? There is no rational, much less compelling, policy interest in limiting

⁴ "I am an attorney, but not a technical expert on the Federal Election Campaign Act. The fact that an attorney with substantial political experience cannot claim to be an expert on the Act immediately highlights the most fundamental difficulty with the Federal Election Campaign Act. When Congress passes this Act, it created a new legal specialty -- federal election law attorneys. This small cadre of individuals seems to be the only ones who understand completely the myriad rules and regulations." Richard Richards, former chairman of the Republican National Committee, Statement before U.S. Senate Committee on Rules and Administration, Nov. 20, 1981.

party activities on behalf of candidates. In *Buckley*, this Court recognized that:

the primary interest served by . . . the Act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office.

424 U.S. at 25.

This Court later reaffirmed that preventing corruption or the appearance of corruption are the *only* legitimate and compelling government interests that can support expenditure or contribution limits:

We held in *Buckley* and reaffirmed in *Citizens Against Rent Control* that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances. In *Buckley* we struck down the FECA's limitation on individuals' independent expenditures because we found no tendency in such expenditures, uncoordinated with the candidate or his campaign, to corrupt or to give the appearance of corruption. For similar reasons, we also find § 9012(f)'s limitation on independent expenditures by political committees to be constitutionally infirm.

FEC v. National Conservative Political Action Comm., 470 U.S. 480, 496-97 (1985). Thus, unless a party's financial support of its candidates is somehow corruptive, or appears

to be corruptive, the government has no compelling interest in limiting such activity.

III.

The United States Court of Appeals for the Tenth Circuit shows a fundamental and profound misunderstanding of the role and function of political parties in our political system. Political party support of its candidates is not corrupting.

No conventional concept of corruption delineates the candidate-party relationship. There is ample support in the political science literature for the proposition that party funding is the least corrupting source of campaign support.⁵ The important and unique role of parties is clear to any thoughtful and informed observer and has been recognized in numerous decisions of this Court.⁶

⁵ See, e.g., A. James Reichley, *The Life of the Parties* 386-94, 419-22 (1992); David Magleby & Candice Nelson, *The Money Chase* (1990); Michael Malbin, *Money and Politics in the U.S.* (1986); Herbert F. Alexander, *Comparative Political Finance in the 1980s* (1989); Nelson W. Polsby, *Consequences of Party Reform* 178 (1983); John K. White & Jerome M. Mileur, *Challenges to Party Government* (1992); David K. Ryden, *Representation in Crisis* (1996).

⁶ See, e.g., *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 244 (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214-15 (1986); *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121-22 (1981); *Cousins v. Wigoda*, 419 U.S. 477, 487-88 (1975); *Storer v. Brown*, 415 U.S. 724, 728-29 (1974); *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

There is "no America without democracy, no democracy without politics, and no politics without parties . . .".⁷ These opening words from Clinton Rossiter's work on American political parties are as true today as when they were first written more than thirty years ago. There is not a true democracy in the world that does not have free and active political parties.

In the view of almost all political scientists, parties are the most important instruments for achieving effective democracy.⁸ Political parties, as they evolved in this country, have greater importance than in other Western democracies for a myriad of reasons:

- Parties promote agreement between different interests and groups. In our individualistic, pluralistic, sometimes fractured country, we need unifying forces. Because parties want above all to win elections, they work to compromise differences for the common cause.
- Parties promote discussion of major issues. A party seeks support for a program, not only individuals. By presenting a platform, or a legislative agenda such as the "Contract with America," the "New Deal" or the "Great Society," a party organizes the choices facing

⁷ Clinton Rossiter, *Parties and Politics in America* 1 (1960).

⁸ See John H. Aldrich, *Why Parties?* 18 (1995).

the electorate, and helps voters to make informed decisions.

- Parties foster effective government. Deadlock and gridlock always threaten the American governmental system because of the division of power among the three federal branches and the national and state governments. Parties provide one important means to link these competing centers of power.
- Parties provide responsibility and accountability. When they make decisions on public issues, parties accept a collective obligation to further the public interest as they see it. The voters then know whom to praise or blame for the results of government action.
- Parties promote participation. They work hard to enroll voters. They combat cynicism about politics by giving citizens a way to join with others, to contribute time and money, and to become involved in exciting, enhancing, and effective, political action.⁹

Political parties, as we know them, are an American invention. Parties were not accidents of history. Our

⁹ According to a 1992 study conducted by the National Opinion Research Center and The American National Election Survey (unpublished), persons who were affiliated with the Democratic and Republican Party were more likely to have voted, to be interested in, pay attention to, or care about the results of, the presidential election, than persons unaffiliated with a political party, by significant margins.

earliest political leaders realized that they were essential in bringing order to America's tripartite form of government. Thomas Jefferson and James Madison devised them as means of changing the policy directions of government. See Aldrich, *Why Parties?*, at 68-95. Later, Andrew Jackson and Martin Van Buren revised them as a means of expanding popular participation in government. *Id.* at 97-156. Since the earliest days of our Republic, they have, albeit imperfectly, continued to serve these ends. Parties are the only broad-based, multi-interested organizations in this country that can nominate candidates for office, mobilize popular support behind them, and organize those elected into a government. Unlike special-interest groups, parties must appeal to majorities in the electorate if they are to win; and unlike single-candidate organizations, they must win many races if they are to govern. Parties, moreover, give coherence to American politics. We have a constitutional system and a political culture dominated by disunifying forces -- separated powers, federalism, pluralism, and individualism. Parties have been a unifying force in this system, cutting across the branches and levels of government as well as across voting blocs to aggregate interests, build coalitions and make mass democracy possible.¹⁰

¹⁰ "There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government. The preservation and health of our political institutions, state and federal, depends to no small extent on the continued vitality of our two-party system, which permits both stability and measured change." *Davis v. Bandemer*, 478 U.S. 109, 144-45 (1986) (O'Connor, J., concurring).

Individual candidate organizations do not provide the men and women they support with programs or principles. Single-issue groups lead to fragmented government, the neglect of broader policy needs, and the neglect of needs of citizens not represented by groups. Broad-based political parties, on the other hand, can compromise and incorporate the wishes of a wide range of citizens in programs that encompass a multitude of issues and stretch across a greater time span than a term of office. They can marshal the resources and develop the strategy to recruit, train, support and guide a succession of highly qualified individuals to advance those programs during their terms in office. Political parties provide an effective means of holding elected representatives accountable to the people who elect them on the basis of their parties' programs, sometimes they show themselves ready to deny renomination to incumbents who have acted contrary to those programs. They are able to put forward a broad panel of spokespersons in defense of their programs, informing and educating the citizenry in a debate that extends well beyond the short-range electoral prospects of particular candidates.

In short, only political parties can provide us with the cohesion, continuity and accountability necessary to make democracy work. Political parties are the only broad-based, popular intermediaries between the people and their government. Voters use them to steer government in directions they wish it to go. When political parties work, government works. When they do not, government falters and drifts.

It is interesting to note that the primary way we measure the increased democratization of the former "captive nations"

of Eastern Europe is the spread of political parties through the region. As Poland, Czechoslovakia and Hungary - to name but a few examples - make clear, political parties give voice to the many in the pursuit of great ideas. What is true for Eastern Europe also holds for the United States.

In all democratic nations political parties have the purpose of controlling and directing the struggle for political power. Political parties in the United States do this, but are also unique in that they provide a framework for the accommodation and consensus development which our political system must have to function. The party system, when it operates properly, overcomes the handicaps to governance imposed by the separation of powers.¹¹ In other words, the U.S. government is not solely a party government as Great Britain's, it is also a constitutional government, and the parties are needed to guide the various levels of government authority into an integrated, functioning system.

More public officials are popularly elected in the United States than in any other nation. The parties also provide a rational basis for voter decision-making among the myriad known, little-known, or unknown individual candidates who run for office in this country. Candidates nominated by political parties represent certain views and philosophies. Although there is a wide range of differences within a party, party identification has a symbolic meaning for the electorate, and the party platform and goals provide a means of evaluating a candidate.

¹¹ V.O. Key, Jr., *Politics, Parties, and Pressure Groups* (1942).

Political party support is not corruptive nor does it appear to be corruptive.¹² Corruption is an impairment of integrity or the exercise of improper and undue influence. A political party's financial support to its candidates does not constitute corruption. Parties and their candidates share an identity of self interest in elections - this is a symbiotic, not a corrupting, relationship. The notion that party support corrupts candidates runs counter to virtually every theory of political parties' functions in the United States.¹³ One of the major purposes of political parties is to sponsor candidates who represent the diverse, but coherent ideas encompassed in party philosophy.

As a source of campaign funds, American parties probably constitute the cleanest money in politics. Recognizing that political parties are large aggregators of many contributions diffuses any real or perceived undue influence that might arise from a financial contribution.

¹² In their brief submitted to the Tenth Circuit, the Commission offered examples of corrupt party organizations to bolster their argument that party support can be corrupting. However, the Commission could refer only to nineteenth century scandals such as Tammany Hall and Custom House, and the more recent Teapot Dome and Watergate scandals. Teapot Dome involved the misdeeds of a cabinet member and Watergate arose out of the corruption of a candidate's campaign committee - neither involved corrupt political parties. Brief of the Federal Election Commission, at 27 n.6. It is undeniable that all organizations of human beings can be corrupted. This universal shortcoming of our species could provide the basis for restricting the political speech of any organization or individual. Surely, this Court is "chilled" by the prospect of the government determining what political speech by whom is corrupting and in what measure.

¹³ See, e.g., Leon Epstein, *Political Parties in the American Mold* (1986).

Most politicians are honest. However, most are also distracted, many appear influenced, and some may even be corrupted, by the demands of fundraising. Parties are too large and too diverse to be controlled by any special interest. The old rule of sanitary engineers applies: the solution to pollution is dilution.

The Solicitor General asserts that "[t]here is no basis for petitioners to attempt to distinguish party committees from other political committees subject to the contribution limits upheld in *Buckley*."¹⁴ This statement reflects a woeful ignorance of the role of political parties in our system - a level of ignorance that renders further analysis from this source virtually worthless.

Parties are not the same as interest groups. For a party to function it must speak but, at least if it expects to win a majority, it must speak for broader concerns, for some combination of particular claims, for some overall approach to public issues. Parties raising money from many contributors also must listen, but they must listen to majorities rather than any one particular group.¹⁵ Listening to majorities is what we call democracy. Political parties are

¹⁴ Brief for respondent in opposition to the petition for writ of certiorari, at 10.

¹⁵ "Broad-based parties supply an essential coherence and flexibility to the American political scene. They serve as coalitions of different interest that combine to seek national goals. The decline of party strength inevitably will enhance the influence of special interest groups whose only concern all too often is how a political candidate votes on a single issue." *Branti v. Finkel*, 445 U.S. 507, 532 (1980) (Powell, J., dissenting).

the most comprehensive and potentially most effective form of political association through which ordinary Americans can influence the direction of their government. We should prize them as the cornerstones of representative democracy and work to assure their vitality.

There is no basis in American political theory or practice for any limit on political party contributions to candidates. Unlike PACs and even individuals, there is no risk of a party corrupting a candidate by giving him or her a large sum of money. The party and the candidate clearly share a common interest in the candidate winning the election, and they presumably share a common interest as well on at least major questions of public policy. Enabling parties to fund candidates at higher levels would encourage candidates to rely more on their parties for financial support, and an enlarged role for parties is probably the best way to check the growing influence of PAC money in congressional campaigns. Increased funding would also help parties recruit stronger candidates and increase competition for office. Competition is probably the single best guarantee that the public interest will be protected. Moreover, a larger role for parties would increase their leverage with candidates and mean a better chance of achieving a greater degree of policy agreement and discipline in government.

Much has been written about the so-called alarming rise of PACs.¹⁶ Whether PAC contributions pose a threat of corruption can be reasonably debated. While PACs,

¹⁶ See generally Brooks Jackson, *Honest Graft* (1988); Larry J. Sabato, *PAC Power* (1984); Reichley, *The Life of the Parties*, at 366-70; Amitai Etzioni, *Capital Corruption* (1984).

independent expenditure groups, and other organizations allow citizen participation, they still serve single or narrow interests. A limitation on their contributions can be analyzed as a check on the appearance of undue influence or corruption.¹⁷ Parties, on the other hand, serve as an umbrella for heterogeneous concerns. There is no plausible reason for limiting a party's contributions to its own candidates. Parties cannot corrupt a candidate. They share a common, valid purpose, winning the election and promoting a policy agenda. When a party gives money to a candidate, it promotes the marketplace of political ideas by expressing its vision of the common interest and enabling voters better to understand, accept or reject that vision.

In *FEC v. National Conservative Political Action Committee*, this Court reiterated its position from *Buckley v. Valeo* that "PACs' expenditures are entitled to full First Amendment protection." 470 U.S. at 496. Are party expenditures also not entitled to full First Amendment protection? There is no reason why party committees should be disadvantaged vis-a-vis independent groups and PACs. Limitations on party activity are nonsense. Why the United Auto Worker's PAC or the National Conservative PAC or any of the myriad other groups representing legitimate expressions of special interests can spend an unlimited amount of money supporting candidates, and the Republican or Democratic Parties cannot, is baffling. All political committees, with the exception of party committees, are

¹⁷ "Who contributes to campaigns and why? For some it is a matter of citizenship . . . and for virtually all PACs, something more tangible is expected." Edward Schneier & Bertram Gross, *Congress Today* 65 (1993).

entitled to make unlimited independent expenditures on behalf of any candidates for federal office. Yet expenditures by party committees on behalf of their candidates are deemed "coordinated expenditures" or in-kind contributions, both subject to strict limits.

The Commission has adopted regulations expressly prohibiting independent expenditures by party committees. 11 C.F.R. § 110.7(b)(4) (1995). The Commission argues that any expenditures by the party on behalf of its candidates should be analyzed by this Court as contributions rather than expenditures by the party for their candidates.¹⁸ This is the Commission's sole rationale for parties to be subject to an expenditure limit that is placed on no other political committee. This Court's analysis as to why contributions can be subject to stricter regulation than expenditures is found in *Buckley*:

By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the

¹⁸ Brief for the respondent in opposition to the petition for writ of certiorari, at 8-9.

expression rests solely on the undifferentiated, symbolic act of contributing.

424 U.S. at 20-21.

A limit on political party contributions or expenditures is not a "marginal" restriction upon its ability to engage in free communication. A party expenditure enables it to communicate party views to the general public. It is not a "symbolic act." It does not have as its primary purpose an indication to the candidate that the party supports his candidacy or positions. The quantity of communication *does* increase perceptively with the size of the party's expenditure, the amount of political advocacy. The Court's analysis explaining why contributions can be subject to greater limitations does not justify this impairment of party speech rights. Whether the party expenditures limits in the Act are analyzed as in-kind contributions or expenditures by this Court is immaterial. There is no basis for limitations on party expenditures or contributions.¹⁹

There are only a few possible sources of campaign money. It can come from the individual candidates, at the risk of restricting major offices to the wealthy, leading to government of and by the rich. It can come from individuals and group contributors, such as PACs, exposing legislators to the influence of special interests, and to the voters' suspicion of corruption.²⁰ It can come from government,

¹⁹ See generally Eric L. Richards, *The Rise and Fall of the Contribution/Expenditure Distinction: Redefining the Acceptable Range of Campaign Finance Reforms*, 18 New Eng. L. Rev. 367 (1983).

²⁰ John Wright, *Interest Groups and Congress* (1996).

but public financing is both clumsy and politically infeasible. Campaign finance is a choice of alternatives. Compared to these other sources, party support runs the *least* risk of corruption or the appearance of corruption.

IV.

The restriction in the Act on political parties' support of their candidates has the effect of increasing the risk of corruption or the appearance of corruption in the financing of political campaigns - the exact opposite of the only legitimate justifications for such a restriction on First Amendment rights.

The Court of Appeals observed that "[t]he members of Congress who enacted this law were surviving veterans of the election campaign process, and all were members of organized political parties. They should be considered uniquely qualified to evaluate the risk of actual corruption or appearance of corruption from large coordinated expenditures by political parties." *FEC v. Colorado Republican Fed. Campaign Comm.*, 59 F.3d 1015, 1024 (10th Cir. 1995), *cert. granted*, 64 U.S.L.W. 3458 (U.S. Jan. 9, 1996).

This statement is based upon the false predicate that the party limitations contained in the Act were enacted for the purpose of limiting corruption or the appearance of corruption from large coordinated expenditures by political parties. There is absolutely no support for this conclusion in any legislative history of the Act. Numerous other reasons have been postulated for the various limits in the Act, such as the equalization of resources or the reduction of campaign costs. *See Buckley*, 424 U.S. at 28-29; *see also*

Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 295 (1981). The Court of Appeals' assertion that this particular part of the Act represents a concern of Congress about the corrupting influence of party support of a candidate is without any historical foundation and is not supported by any practical analysis.

One will search in vain for any reference in the congressional debate or discussion of the Act or any of its subsequent amendments for an expression of an intent or desire to weaken political parties.²¹ Nevertheless, the specific provisions of the Act which limit party expenditures and contributions can be isolated and are known to have the unintended, but undeniable effect of weakening political parties and strengthening the competitive position of other entities for political influence in our system.²²

The present law creates an environment in which special-interest PACs and single-interest groups have become more important competitors of parties for political influence.²³

²¹ Federal Election Commission: Legislative History of Federal Election Campaign Act Amendments of 1974 (1977); Legislative History of Federal Election Campaign Act Amendments of 1977 (1977); Legislative History of Federal Election Campaign Act Amendments of 1979 (1979).

²² "The growing importance of PACs can be traced to the 1972 law reforming campaign finance." Scheier & Gross, *Congress Today*, at 65; *see also* Frank Sarauf & Scott Wilson, *Campaign and Money*, in *The Parties Respond* 191 (Sandy Maisel ed., 1990).

²³ William J. Keefe, *Parties, Politics, and Public Policy in America* 140 (5th ed. 1988); David E. Price, *Bringing Back the Parties* 249 (1984).

Present law has endowed PACs with substantial advantages over party committees. Instead of broad-based, coalition-forming parties being the predominant support factor in campaigns, single and special-interest organizations continue to move toward predominance. Campaign financing laws limiting party activities are affecting the relationship between candidates and their parties and the relative power of interest groups and political parties. They inevitably change the nature of our political system and the coalitional governance that has made it so stable. When candidates and parties are interdependent, political responsibility is enhanced. When candidates are not dependent on parties for funds and material support, holding elected officials accountable becomes more difficult. The more a candidate depends on the party, the greater the party's ability to apply its leverage to achieve policy coherence and mobilize party majorities in Congress. Since it is easier to get two parties to agree than a group of contentious, independent individuals, national unity and consensus are more attainable when parties are strong.

Allowing unrestricted party expenditures for candidates would also help to recruit more diverse and stronger candidates, particularly challengers and open-seat contestants. With significant funds available from parties, candidates would be better able to resist any improper demands by individual contributors or PACs. The result would be increased and cleaner competition for political office. Such competition is the best guarantee that the public interest will be protected.

With diminished party strength came a new politics, characterized by excessive media influence, political fad-of-the-month clubs, massive private financing by various "fat cats" of state and congressional campaigns, gun-for-hire campaign managers, lowered concern for policy, and maneuvering and management by self-chosen political elites. The composition of political parties had a significant impact on the operations of the federal government. David Broder wrote: "The governmental system is not working because the political parties are not working." David Broder, *The Party's Over* xxiii (1972).

Since Broder completed his book in 1972, the linkages between the party-in-the-electorate and the party-in-government have become increasingly frayed. Fewer Americans than ever before identify with a political party. Candidates, not parties, dominate campaigns. Interest groups, especially PACs, raise enormous sums of money for congressional office-seekers and, in the view of the general public, exercise far too large a role in determining the actions of government.²⁴

Citizens who view their interests as defined more broadly than the support of a given candidate or issue will find it difficult to pursue their objectives because of the restrictions on political parties. Voters are encouraged to put their energies into candidates, not parties, and to concentrate on

²⁴ According to a CBS-New York Times poll taken after the 1994 elections, seventy-eight percent of voters believe Congress is more interested in serving special interests than the average citizen. Gil Klein, *Campaign Finance Report Still Waiting*, Tampa Trib., Aug. 19, 1995, at 4.

issues, not offices. Any effort to focus on the broad spectrum of issues is discouraged by the special interest view of politics enshrined in the Act.²⁵

The FECA's limitations on party support encourage candidates to run campaigns with little concern for their party and its programs, and thus discourage responsibility and accountability. It gives an advantage to candidates with personal wealth, and promotes an endless search for contributions from special interest. It helps incumbents who have ready access to individual contributors and PACs, but limits the effective competition that is the foundation of voter control over government. It allows unlimited "independent" expenditures by groups with a narrow agenda, while restricting spending from the most broadly-based organizations, the political parties. It stimulates the worst political habits, the search for loopholes in the law such as "soft money," leading to further public cynicism about politicians and withdrawal from the electoral process. In short, the restriction of party contributions and expenditures has led to an *expansion* in the appearance of undue influence and corruption in our campaign finance system.

The law places political parties at a disadvantage vis-a-vis more narrowly based special-interest groups. The law permits non-party political committees to make unlimited independent expenditures supporting or opposing federal candidates. Political parties cannot make such unlimited expenditures. The FECA and the Commission's regulations

²⁵ Stephen E. Gottlieb, *Fleshing Out the Right of Association: The Problem of the Contribution Limits of the Federal Election Campaign Act*, 49 Alb. L. Rev. 825, 832-48 (1985).

imprudently and unconstitutionally diminish the importance of political parties.

CONCLUSION

"Without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy. The stakes are no less than that. . . . Modern democracy is unthinkable save in terms of parties." These assertions represent the overwhelming consensus of those who study American politics.²⁶ Politics has become a regulated industry. If we understand the essential role of healthy parties in our political system, then, at the very least, one of the goals in the regulation of that industry should be preserving the vitality of our parties.

This Court should heed the advice of James Madison on the question of "factions" or "parties":

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence, the other, by giving to every citizen the same opinions, the same passions, and the same interests It could never be more truly said than on the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of

²⁶ E.E. Schattschneider, *From Party Government* 1 (1940).

air, which is essential to animal life, because it imparts to fire its destructive agency.²⁷

The essence of the First Amendment is the protection of liberty. The Act's limits on party activities restrict the liberty of political parties; the support of candidates is essential to a political party's life. Just as a fire without air will expire, so too will a political party prevented from freely supporting its candidates.

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²⁷ James Madison, *The Federalist*, No. 10, Nov. 23, 1787.

APPENDIX A

COMMITTEE FOR PARTY RENEWAL

Declaration of Principles

The Committee is a voluntary, bipartisan association of political scientists and practitioners committed to strengthening political parties in the United States. Organized in 1976, the Committee has sponsored panels on political parties at the annual meetings of the American Political Science Association and issued periodic statements on public policy questions pertaining to the American party system. In September 1977, the Committee presented the following declaration of principles, which was read by Professor James MacGregor Burns at the Jefferson Memorial.

We meet today, at this shrine of American democracy, to deplore the disintegration of a basic American institution. Our political party system, first inspired by Thomas Jefferson, is in serious danger of destruction.

Without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy. The stakes are no less than that.

We are not speaking today in defense of the boss-ridden parties of an earlier era. Indeed, the demise of the boss has opened a new opportunity for a strong two-party system. Currently, in certain states, new-style parties have already taken shape, providing a model of broad participation, focused on issues.

But such local rebuilding is struggling against powerful counterforces that are undermining party structures everywhere. If these forces ultimately prevail, it would mean the end of potentially the most powerful political organizations acting for the people as a whole--poor people, middle class people, all those who lack specialized political organizations of their own. It would mean the end of a crucial link between the mass of people and the issue-discussing and policy-making process. It would mean the end of an organized "loyal opposition" that can keep officials under watch and on their toes. It would mean the end of any real hope for national party leadership with enough clout to hold Presidents to their campaign promises and curb tendencies toward the "imperial presidency."

What would take the place of parties? A politics of celebrities, of excessive media influence, of political fad-of-the-month clubs, of massive private financing by various "fatcats" of state and congressional campaigns, of gun-for-hire campaign managers, of heightened interest in "personalities" and lowered concern for policy, of manipulation and maneuver and management by self-chosen political elites.

To reverse the decline of party and reinvigorate these great instruments of democracy, we urge the following steps:

1. Public financing of campaigns through parties.

Instead of giving money to individual candidates, the federal and state governments should provide funds to the parties, which would use it both to strengthen their organizational and educational programs and to help candidates with their campaign costs. Public funding of parties already exists successfully in a half-dozen states, and is a part of the presidential campaign finance law. These sound precedents should be taken as a model for any proposal to finance congressional campaigns.

2. Mid-term conventions for both major parties.

We urge that each party hold a mid-term national convention, where issues may be debated and voted upon, and the party's platform renewed. Delegates to the convention should include both elected office-holders and persons chosen by the party rank-and-file. Holding such a convention is at least as important for the party out of power as for the party in power.

3. Reverse the trend toward more and more primaries.

Primaries, in an appropriate mixture with other devices such as caucuses and state conventions, are part of the traditional process by which the major parties choose their nominees for President. But the system has gotten out of

balance. About three-quarters of the delegates to national conventions are now chosen in primaries. More states are planning to adopt presidential primaries, if only to share in the kind of media attention a small state like New Hampshire receives. Collectively these primaries are expensive, exhausting, confusing, and unrepresentative. In the interest of democracy and for the sake of the party system, we call upon state legislatures to reverse the trend toward proliferation.

These steps, taken together, will serve the important purpose of helping to broaden party participation, revitalize party activity, and hence strengthen democracy in wards, precincts, and communities throughout the country.

It is more than three years since Watergate. We are in danger of forgetting the main revelation of that episode: the pernicious influence that big-time campaign contributors can have over government. The best remedy for that disease is the revitalization of the party system. We call upon all friends of democracy to join us in working for party renewal.

APPENDIX B

COMMITTEE FOR PARTY RENEWAL

Principles of Strong Party Organization*

"A political party is the instrument of the people's will. It exists not just to win elections but to move a country. Its purpose is not to placate a cacophony of strident voices, but to attract diverse groups to a common purpose. It is built not on television, but on a national vision. And when that party is out of power, its charge is to provide an alternative."

Senator Ernest F. Hollings**

Political parties are an American invention. Jefferson and Madison devised them as means of changing the policy directions of government; Jackson and Van Buren revised them as means of expanding popular participation in government. Since the 1830s, they have, albeit imperfectly,

* This position paper was prepared by Jerome Mileur, Executive Director of the Committee for Party Renewal, reviewed by the Committee's executive committee, submitted to the full membership for comment, and approved at the Committee's annual business meeting, September 1, 1984.

** The Washington Post (National Weekly Edition), July 23, 1984, p. 23.

continued to serve these ends. Parties are the only broad-based, multi-interested organizations we have that can nominate candidates for office, mobilize popular support behind them, and organize those elected into a government. Unlike special-interest groups, parties must appeal to pluralities in the electorate if they are to win; and unlike single-candidate organizations, they must win many races if they are to govern. Parties, moreover, give coherence to American politics. We have a constitutional system and a political culture dominated by disunifying forces: separated powers, federalism, pluralism, individualism. Parties have been a unifying force in this system, cutting across the branches and levels of government as well as across voting blocs to aggregate interests, build coalitions, and make mass democracy possible.

Political parties have always had a difficult time in our constitutional system and will always have to compete for influence here. Historically, their influence has waxed and waned. But strong parties and a strong party system remain the best hope for representative and responsible democracy in an extended and diverse republic like ours. They are the only institutions in our electoral system that can be held accountable for what government does. Those elected to public in their name must make policy, not just advocate it, and are answerable for their actions to the electorate as a whole, not to a narrow constituency of limited and special interest.

Strengthening our political parties ultimately means making them more representative and accountable institutions that link elections to government, so that voters can influence the direction of public policy. A strong party

system, therefore, should be both competitive and participatory, and should structure electoral choice as to the direction of government. A strong party should have the organization and resources to formulate a coherent set of public policy principles, to nominate and elect candidates for public office consistent with these principles, to withhold party support from candidates who do not support its principles, and to advance these principles in government. A strong party should be open to all party members, should have active committees at all levels, should support candidates for all public offices, should be professionally staffed, and should have clear lines of internal authority. We believe the following principles of strong party organization are a guide to these ends.

(1) Political parties should govern themselves. As private associations with public responsibilities, parties should be as free as possible from state and federal regulation to determine their own structure and functions. The public interest requires that parties operate in an open, honest, fair, and accountable way, but these goals may be achieved through reporting and disclosure requirements and not by detailed regulation of party organization and activities. Parties should define their organization and powers formally and publicly through party constitutions or charters and by-laws, so that all who affiliate with them may know the rules of party governance. In our political system, parties differ organizationally and functionally from political action committees and other special interest groups, and they should not be treated the same in law. Indeed, state and federal courts have regularly recognized this distinction. The public interest is best served by law that complements party self-regulation, not by statutes that substitute for it.

(2) Political parties should use caucuses and conventions to draft platforms and endorse candidates. Caucuses and conventions are avenues of general participation in party affairs that encourage dialogue and peer review of party programs and candidates. The quantity of participation in them may not be as large as in primaries, but the quality of participation is much higher. Local caucuses open to all registered party members are useful checks on both the programmatic direction of a party and the ambition of individuals seeking party endorsement for public office. Party conventions, representative of local caucuses and committees, should devise platforms and endorse candidates for public office. Party primaries closed to all but party registrants can be an effective rank-and-file check on party endorsements and should therefore follow party conventions.

(3) Political party organization should be open and broadly based at the local level. Local politics is a basic testing ground for candidates and the principal arena of direct citizen participation in politics. Strong local party committees should be the foundation upon which state and national party structures are built. They should be the principal party instrument for defining membership, registering voters, recruiting candidates, and conducting campaigns. They should also be central to the development of a party platform and to public education with respect to party programs for government.

(4) Political parties should advance a public agenda. Parties are the most broadly-based organizations in our democratic system and thus best able to define priorities for government and to develop programs that serve general

interests. They serve the public interest best by developing and defining a broad philosophy of governance that differentiates one party from another and by giving voters a reasonable choice in the direction of government. Parties should develop platforms at all levels of government through open and representative procedures that begin with caucuses at the local level in which all registered party members may participate. They should publicize their platforms in order both to inform their members and to educate the public, and should develop procedures through which to hold party nominees and office holders accountable to party platforms.

(5) Political parties should endorse candidates for public office. If parties are to present voters with a choice of policy alternatives and if they are to be accountable for governance, they must have a measure of control over who runs for office in their name. At the very least, parties should be able to establish threshold tests for candidate access to primary ballots of 15-20% of the vote at endorsing conventions, thereby assuring that all candidates for nomination represent significant factions within the party. Checks may be legislated on party endorsement processes to ensure full and fair participation of party members, but the ultimate check will and should be whether a party's program for and performance in government merit the support of the general electorate.

(6) Political parties should be effective campaign organizations. Parties will be strong insofar as candidates depend upon them for election and insofar as they are key to the success of those who seek election in their name. To this end, parties should recruit candidates who share their philosophy and should provide them with training and expert

advice and direction in the organization and conduct of their campaigns, with research on the district and the opponent, and with polling, media, and other state-of-the-art campaign services. Parties should also endeavor to coordinate campaigns of all party candidates in a given election to minimize conflicts and to maximize resources.

(7) Political parties should be a major financier of candidate campaigns. No service to candidates is more important than the provision of money, and there should be few restraints on the ability of parties to raise and spend money in campaigns. Limits on individual contributions to parties should be removed, and limits on annual individual contributions to parties that qualify for a full tax deduction or credit should be raised significantly. Statutory limits on group contributions to candidates and parties should be retained. Parties themselves should be able to make unlimited contributions to the campaigns of their candidates for offices at all levels of government. If a system of public financing of elections is adopted, it should use the parties as channels through which to distribute these funds as they see fit.

(8) Political parties should be the principal instruments of governance. Parties should be instruments of collegial governance which broaden and unite leadership in the different branches and levels of government and by means of which specific programs may be developed to implement party platforms. State central and national party committees should work closely with party leaders in the legislative and executive branches of government to advance the party platform. Party leaders in Congress and state legislatures should make maximum use of caucuses in setting a party

agenda and developing strategy. Presidents and governors should make maximum use of party platforms and committees to develop their programs and to educate voters. Equally important, the opposition party(s) should be institutionalized, through question periods or in other ways, so as to provide a more effective check on specific policy decisions of the government. Between elections, the opposition is the key to accountability, and the quality of democratic government turns as much on its performance as it does on that of the party in power.

(9) Political parties should maintain regular internal communications. Parties at all levels should keep members informed of activities, decisions, and plans through newsletters or other house organs. This is another avenue of accountability and also one of participation, for it facilitates an exchange of ideas, positions, and analyses about the party and politics of the moment. Organizationally, a good house organ can build support for party positions and programs and also lance sores before they become cancers. It also makes for "news" about the party.

(10) Election law should encourage strong political parties. More than other forms of political organization, parties have served egalitarian and majoritarian values and encouraged widespread citizen participation in American politics. They are our most democratic institutions and should be sustained and encouraged by public policy. This can be done in many ways, including requiring voter registration by party, adopting the party column ballot, and restoring partisan local elections. Public policy should also recognize the difference between parties and other political groups in the regulation of campaign finance, the making of

endorsements, and access to both the ballot and the news media. By law, parties should have a privileged position in our political system. They should be given advantages over special interest groups and over individual candidates.

In recent years, there have been widespread reports that our political parties are dying. These obituaries are premature. Indeed, party organization at the state and national levels may never have been healthier than it is today, as the number and professionalism of staff has grown along with the financial resources and activities of parties at these levels. Rather than on their deathbed, our parties have been in a long transitional period from an old politics of patronage and machine organization to a new politics of issues and high technology. Since the 1960s, both national parties have sought to renew themselves by adapting organizationally to the changed realities of American politics. The two parties, however, have not taken the same approach to renewal: the Democrats have concentrated on internal reform, while the Republicans have focused on candidate services. But a truly strong party should travel both these paths: it should be both internally democratic and electorally effective. We believe that the principles outlined above will produce the kind of party organization that can realize these goals and strengthen American democracy as a result.

APPENDIX C

COMMITTEE FOR PARTY RENEWAL

Statement On Campaign Finance

Legislation affecting campaign finance reform will soon be before you. The Committee for Party Renewal urges that you support those measures that increase the role of political parties in election campaigns. We endorse provisions in recent proposals which further this basic goal. They should be central in any new statute.

Political parties are the only broad-based, popular intermediary between the people and their government. Voters use the parties to steer the government in the direction they wish it to go. When the political parties are working, government works. When the political parties cannot supply the oil, the result is a clanking of the engines of government.

Today, many Americans are dissatisfied with their government. Recognizing the problem, the Congress is preparing to act on campaign finance reform. In its action, the Congress should focus on the truly basic causes. The public's disenchantment, we believe, stems from the fact that political parties no longer play a major role in Congressional elections. The decomposition of the parties is responsible for a new politics, characterized by excessive media influence, massive private financing by various "fat cats" of

state and congressional campaigns, gun-for-hire campaign managers, and lower public concern for policy.

Campaign finance reform can remedy these problems. It should further four vital goals: (1) Restoring the parties to their rightful place; (2) Encouraging competition between the two parties; (3) Encouraging more people to participate in politics; and (4) Educating the electorate. These goals can be incorporated into any pending legislation. They would enhance the standing of both the Democratic and Republican parties, without giving either any advantages in new legislation.

Money is the crucial ingredient in campaigns. While money itself is not an evil, the system of finance needs repair. In so doing, Congress has an opportunity to refurbish a vital institution of government -- the political parties. This can be accomplished in five ways. First, limits on individual contributions to parties should be substantially raised for such party-building purposes as voter registration, program development, research, and get-out-the-vote drives. Second, contributors to parties for campaigns should be allowed to give more than contributors to individual campaigns. Third, parties themselves should be able to make unlimited contributions to their candidates for offices at all levels of government. Fourth, any system of public financing should channel campaign funds through party committees. Fifth, there should be full disclosure of all contributions and expenditures.

New legislation must be fair to both parties. Their respective, and different, funding sources must be recognized

and each party must have an opportunity to state its case fairly and fully. This requires that any spending limitations be set at a sufficiently high level to allow true competition. It also requires that the parties, and their candidates, be encouraged to develop multiple sources of financial support, beyond political action committees. Restoration of individual tax credits for political contributions would serve these ends, and increase political participation, in the form of financial support of campaigns by the general public. Fair competition would also be promoted by legislation that reduces the cost of campaigning, including reduced broadcasting rates and postal rates or even free mailings.

Renewed political parties can again provide a forum for discussion of vital issues and make government more responsive to public opinion. With new technologies, action is needed to enable parties to act as opinion organizers. In its legislation, the Congress should mandate significant and free television time for the parties, on behalf of themselves and their candidates. As noted in the recent report to the Majority and Minority Leaders of the Senate, the United States is the only major democracy that does not provide for some free broadcasting time. The amount of television time should be sufficient so that parties can campaign effectively on behalf of their tickets, sponsor "generic" ads that convey party positions on important voting issues, and provide considerable time for individual candidates to reach the voters. The content of these messages should be left completely to the parties and candidates.

In addition to the free broadcast time, political parties should be the sole sponsors of televised debates. Indeed, the free

television time given to the Democratic and Republican parties should be conditioned on their acceptance of such sponsorship. Debates do more than simply inform voters of who the candidates are; they enhance the electorate's ability to make a considered judgment. Voters are not fools. When provided with information about the candidates' views, voters show an uncanny skill to cast an informed, responsible ballot.

These proposals are modest, but interrelated. The Congress should pass an integrated program now in order to avoid the consequences of piecemeal change, which often creates more new problems than it resolves. The proposals we recommend would restore political parties to their rightful place in government. Without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Therefore, parties are indispensable to the realization of democracy, and financing is central to parties. The stakes are that high. Renewing the political parties would be a lasting achievement of the 101st Congress.

The Committee on Party Renewal consists of some 500 political scientists and party activists interested in revitalizing political parties in the United States. Since its inception in 1975, the Committee has sponsored workshops on party building and publishes a quarterly newsletter, *Party Line*.